

CHAPTER 2

ELECTRONICS AND INFORMATION TECHNOLOGY ACCESSIBILITY

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2.001 Purpose

This chapter establishes policy and responsibilities for ensuring accessibility of the Department of Transportation's (DOT) electronic and information technology (EIT).

Section 508 of the 1973 Rehabilitation Act was amended in 1998 to require Federal agencies to ensure that any time the Government maintains, procures, develops, or uses EIT that it is accessible to persons with disabilities. Both Federal employees with disabilities and members of the public seeking information or services from the Federal government must have comparable access to the government's electronic and information technology. Section 508 focuses on whether mainstream EIT products meet the Access Board's Section 508 Standards ([36 CFR Part 1194](#)), even if an agency has not identified employees or members of the public with disabilities who will be using the EIT.

2.002 Scope

The provisions of this chapter apply to all Departmental EIT developed, procured, maintained, or used by DOT organizations on or after June 21, 2001. Unless an exception applies, acquisitions of EIT supplies and services must meet the applicable accessibility standards at [36 CFR Part 1194](#).

EIT subject to the Section 508 technical standards include:

- A. Software applications and operating systems.
- B. Web-based information or applications.
- C. Telecommunication products.
- D. Video and multimedia products.

- E. Self-contained, closed products. Examples include information kiosks, information transaction machines, copiers, printers, calculators, fax machines, and similar types of products.
- F. Desktop and portable computers. Examples include keyboards and other mechanically operated controls, touch screens, use of biometric forms of identification, and ports and connectors.
- G. Information, documentation, and support. Examples include user guides, installation guides for end-user installable devices, and customer support and technical support communications.

Exceptions:

- A. Imposes an undue burden on the agency (FAR 39.204(e) and 36 CFR section 1194.2). See Section 2.006 below.
- B. Is a National Security System (FAR 39.204(b) and 36 C.F.R. section 1194.3(a)).
- C. Is acquired by a contractor incidental to a contract (FAR 39.204(c) and 36 C.F.R. section 1194.3(b)).
- D. Is located in a space frequented only by service personnel for maintenance, repair, and occasional monitoring of equipment. (FAR 39.204(d) and 36 C.F.R. section 1194.3(f)).
- E. Imposes a fundamental alteration in the nature of an EIT product or its components. (36 C.F.R. section 1194.3(e)).
- F. Is commercially unavailable. If commercially unavailable, the requiring official must document in writing the nonavailability, including a description of market research performed and which standards cannot be met, and provide documentation to the contracting officer for inclusion in the contract file (FAR 39.204(e)(2)(ii)).

Equivalent Facilitation:

Nothing in this part is intended to prevent the use of designs or technologies as alternatives to those prescribed in this part provided they result in substantially equivalent or greater access to and use of a product for people with disabilities. Example includes using TTY or a Relay Service to substitute for telephone support as a substantial equivalent to real-time help desk support or information retrieval. A substantially less equivalent method would be the use of a delayed method of help desk support or information retrieval such as e-mail when telephone support is offered.

2.003 References

- [Section 501 of the Rehabilitation Act](#)
- [Section 504 of the Rehabilitation Act](#)
- [Section 505 of the Rehabilitation Act](#)

- [Section 508 of the Rehabilitation Act \(29 U.S.C. 794d\), as amended by the Workforce Investment Act of 1998 \(P.L. 105-220\): Electronic and information Technology Accessibility for Persons with Disabilities](#)
- [Americans with Disabilities Act \(ADA\)](#)
- [Section 255 of the Telecommunications Act of 1996](#)
- [Telecommunications Act Accessibility Guidelines \(Published in the *Federal Register* February 3, 1998\) 36 CFR Part 1193](#)
- [Assistive Technology Act of 1998](#)
- [EEOC Procedures for Providing Reasonable Accommodation for Individuals With Disabilities \(February 9, 2001\)](#)
- [Electronic and Information Technology Accessibility Standards ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD \[Published in the *Federal Register* on December 21, 2000\] 36 CFR Part 1194](#)
- [Federal Acquisition Regulation Part 39, Information Technology](#)
- [Transportation Acquisition Regulation Part 1239](#)
- [Transportation Acquisition Manual 1239](#)

2.004 Definitions

- **Alternate Methods** are different means of providing information, including product documentation, to people with disabilities. The term may include, but is not limited to, voice, fax, relay service, TTY, internet posting, captioning, text-to-speech synthesis, and audio description.
- **Assistive Technology** is any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities.
- **Disability** is a physical or mental impairment that substantially limits one or more major life activities.
- **Electronic and Information Technology (EIT)** is information technology (IT), as defined by [The Access Board](http://www.access-board.gov) (at <http://www.access-board.gov>) at 36 CFR 1194.4 and by FAR 2.101, and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion or duplication of data or information.
- **Electronic and Information Technology (EIT) Accessibility** is accessing information on the Web and also includes a person's ability to use: the intranet, computers, telephones, copiers, printers, fax machines and kiosks.
- **Fundamental Alteration** is incorporating accessibility features into a product that alters the product in such a way as to reduce substantially the functionality of the product, to render some features inoperable, to impede substantially or deter use of the product by individuals without the specific disability the feature is designed to address, or to alter substantially and materially the shape, size or weight of the product.
- **Information Technology** is any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management,

movement, control, display, switching, interchange, transmission, or reception of data or information. The term includes computers, ancillary equipment, software, *firmware and similar programs* or routines, services (including support services), and related resources.

- **Mainstream** electronic and IT products are those that are commonly used and commercially available.
- **Requiring Officials** are personnel who request EIT.
- **Contracting Officers** are personnel who acquire EIT
- **Undue Burden Advisory Board (UBAB)** is the Departmental Board established to review, analyze, and make recommendations advising on complex issues where undue burden is raised as a defense to procuring, developing, maintaining, or using EIT that is not accessible.
- **Undue Burden Report** is a written report issued by the UBAB summarizing the relevant facts, law, policy, and other relevant items and containing a recommendation that undue burden does or does not exist.
- **Undue Burden** means “significant difficulty or expense” when considering “all agency resources available” to the program or component for which the product is being developed, procured, maintained, or used.

2.005 Policy

DOT will develop, procure, maintain, and use electronic and information technology in accordance with EIT accessibility standards for individuals with disabilities published by the Architectural and Transportation Barriers Compliance Board ([Access Board](#)) on December 21, 2000. These standards are enforceable as of June 21, 2001. Where the Department cannot meet the EIT standards because of an undue burden, we will accommodate access to EIT by other methods. DOT policy further encourages all DOT organizations to make applications developed prior to June 21, 2001, which continue to be in use and maintained after June 21, 2001, compliant where practicable.

In addition, the Access Board standards have been included in the Federal Acquisition Regulation (FAR) and are to be included into the acquisition regulations of all DOT organizations not covered by the FAR. [Section 508 Federal Acquisition Regulation \(FAR\) rule](#) (at <http://www.section508.gov/index.cfm?FuseAction=Content&ID=13>) is enforceable as of June 25, 2001. This rule states that all contracts awarded after June 25, 2001, must meet Section 508 standards, except indefinite-delivery indefinite-quantity (IDIQ) contracts. For IDIQ contracts, the FAR rule is applicable to delivery orders or task orders issued on or after June 25, 2001.

2.006 Responsibilities

Successful implementation of Section 508 requires the support of each and every DOT employee who is involved in the design, development, procurement, or use of electronic and information technology (EIT). All employees should understand the requirements of Section 508 and how they may apply to their business operations and processes.

Each DOT Operating Administration and Secretarial Office should appoint a Section 508 Coordinator for organizing and supporting the implementation of Section 508 within their respective organization. The 508 Coordinator serves as the central point of contact for information concerning accessibility issues and solutions.

Responsibility for implementing DOT policies regarding EIT accessibility for DOT employees and individuals with disabilities regarding Section 508 of the Rehabilitation Act, as amended, lies with the following officials and may be delegated as deemed appropriate:

I. Departmental Chief Information Officer (CIO) is responsible for

- A. Overseeing the Department's EIT program and establishing IT policy.
- B. Ensuring the Department's compliance with Section 508.
- C. Providing Section 508 status reports for the Department of Justice and Congress.
- D. Serving as Chair to the DOT Undue Burden Advisory Board (UBAB).
- E. Reviewing and approving products for 508 compliance, as a part of enterprise architecture.

II. Office of the Senior Procurement Executive, OST is responsible for

- A. Providing guidance to DOT procurement offices to implement the EIT requirements of the Federal Acquisition Regulation (at http://www.arnet.gov/far/ha_far.html) 48 CFR Parts 2, 7, 10, 11, 12, and 39 [FAC 97-27; FAR Case 1999-607], published in the Federal Record on April 25, 2001.
- B. Participating on the DOT Undue Burden Advisory Board (UBAB) as a voting member.

III. Assistant General Counsel for Environmental, Civil Rights, and General Law is responsible for

- A. Analyzing and providing advice on questions of law involving Section 508.
- B. Reviewing on behalf of the Secretary of Transportation all determinations that invoke undue burden as a defense, explanation, or exemption to providing accessible electronic and information technology, as set forth by the applicable laws, including 36 C.F.R. Part 1194.
- C. Communicating policies from the Secretary of Transportation to the Undue Burden Advisory Board (UBAB) on Section 508 issues.
- D. Participating on the Undue Burden Advisory Board (UBAB) as a voting member.

IV. Departmental Office of Civil Rights, OST is responsible for

- A. Accepting and investigating employment discrimination complaints filed by Federal employees and applicants for employment at the Department alleging a failure to comply with Section 508 consistent with the procedures at 49 CFR Part 1614.
- B. Providing guidance on other accessibility related laws and regulations (i.e., Sections 501 and 504 of the Rehabilitation Act of 1973, as amended; and the Americans with Disabilities Act (ADA)).
- C. Participating on the Undue Burden Advisory Board (UBAB) as a non-voting member.

V. Office of the Assistant Secretary for Transportation Policy is responsible for

- A. Analyzing and providing advice on transportation policy development, coordination, and evaluation with regard to Section 508 accessibility.
- B. Participating on the Undue Burden Advisory Board (UBAB) as a non-voting member.

VI. Heads of Operating Administrations and Secretarial Offices are responsible for

- A. Establishing a Section 508 program to ensure their organization complies with the [Access Board's Section 508 standards \(36 CFR Part 1194\)](#) for procuring, developing, maintaining, and using EIT that will be accessed by both employees and members of the public. All procurements after June 21, 2001, must comply with the Section 508 standards unless an exception applies or an undue burden can be documented.
- B. Designating a point of contact for the coordination and implementation of Section 508 standards throughout their organization.
- C. Supporting and cooperating with DOT efforts to monitor Section 508 compliance.

VII. Operating Administrations CIO's are responsible for

- A. Providing EIT guidance and assistance to their organization regarding implementation of Section 508 of the Rehabilitation Act, as amended.
- B. Evaluating and reporting on the programmatic and technical compliance of their agency to the Departmental CIO as required.
- C. Reviewing and approving the purchase of products for 508 compliance.

VIII. DOT's Disability Resource Center (DRC), is responsible for

- A. Advising the Departmental CIO on matters involving assistive technologies.
- B. Participating on the Undue Burden Advisory Board (UBAB) as a non-voting member and coordinating UBAB input from employee groups representing individuals with disabilities on specific issues raised with the UBAB.

IX. DOT Requiring Officials and Contracting Officers

Acquisition of EIT that meets the applicable technical provisions of the Access Board's standards is the shared responsibility of requiring activity officials and contracting officials.

- A. *Requiring activity officials* (i.e., officials in the program office or organization that are funding and acquiring the EIT) are responsible for
 - 1. identifying applicable technical provisions of the Access Board's standards in their requirements documents;
 - 2. conducting market research to identify what products, if any, are available to meet those provisions or whether an exception applies;
 - 3. drafting specifications;
 - 4. documenting undue burden determinations; and
 - 5. Obtaining the approval signature of the OA CIO or his/her designee and the approval documents, including commercial unavailability, for submission to the contracting official and inclusion in the contract file.
- B. *Contracting officials* are responsible for pursuing effective acquisition strategies for acquiring EIT.

X. The Disability Law Coordinating Council and its members are responsible for

- A. Providing a consensus on Departmental interpretations of the Americans with Disabilities Act, sections 501, 504 and 508.
- B. Reviewing and seeking consensus on OA interpretations, guidance and policies concerning the Department's disability related statutes and regulations.
- C. Reviewing letters, manual, questions and answers, policy statements and other written information developed by the Department for internal distribution or external publication.

XI. DOT Employees are responsible for:

- A. Assuring that all EIT in the area of responsibility conforms to the provisions of the standards, unless exempted. This includes incorporating accessibility provisions into software development lifecycles, whether procured from outside sources or developed in-house.
- B. Contacting their Section 508 Coordinator for information concerning accessibility issues within their organization.

2.007 Undue Burden Claims

The provisions of Section 508 cover federal employees and members of the public seeking information from the government, unless an undue burden can be established. An undue burden is defined as a "significant difficulty or expense." See 36 C.F.R. section 1194.4 (2000). In

making the “undue burden” assessment of EIT, a Department or agency is obligated to “consider all agency resources available to the program or component for which the product is being developed, procured, maintained, or used.” Further, the law provides that when compliance with Section 508 “imposes an undue burden, agencies shall provide individuals with disabilities with the information and data involved by an alternative method of access that allows the individual to use the information and data.” 29 C.F.R. section 1194.2(a)(1) (2000).

For the DOT, approval of undue burden claims resides with the Secretary of the Department of Transportation. The Secretary established an Undue Burden Advisory Board (“UBAB” or “Board”) to review, analyze, and make recommendations advising on complex issues where undue burden is raised as a defense to procuring, developing, maintaining, or using EIT that is not accessible. The Board is made up of three voting members that include the Chief Information Officer, the Senior Procurement Executive and the Assistant General Counsel for Environmental, Civil Rights and General Law or designee and non-voting representatives from the Office of the Assistant Secretary for Transportation Policy, DOT’s Disability Resource Center, Departmental Office of Civil Rights and the various DOT disability organizations. When the head of an Operating Administration or Secretarial Office makes an initial determination to raise “undue burden” as an exception to the legal requirements of Section 508, the organization’s initial determination may be brought to Board for review. Alternatively, he or she may direct their undue burden findings directly to the Secretary or Secretary’s designee.

[Note: If, at any time, a Section 508 “undue burden” issue arises within the Department, regardless of whether a formal Section 508 complaint has been filed and regardless of whether there is or has been an informal request for access to electronic and information technology, a Departmental employee may request guidance from the UBAB.]

To submit undue burden claims, each DOT Operating Administration or Secretarial Office must first fully evaluate all undue burden issues and consider all agency resources available to the program or component for which the product is being developed, procured, maintained, or used. Undue burden claim submissions to the UBAB must include the following:

- A. A thorough rational explanation why and to what extent compliance with each provision of 36CFR Part 1194 creates an undue burden for the EIT being procured.
- B. All data and findings from the requiring official, including difficulty of compliance, dollar value of the acquisition, market research performed and all costs associated with an alternative means of access that will be provided for individuals with disabilities to use the information or data.

The Board shall, as appropriate, review, analyze, and make a recommendation in order to advise on a complex issue where undue burden is being considered as a defense to procuring, developing, maintaining, or using EIT that is not accessible.

The Board shall review the initial undue burden determination and make the appropriate written recommendation in the form of an “Undue Burden Report.” This report shall be in writing, shall summarize the relevant facts, law, policy, and other material items, and shall contain a final determination as to whether undue burden exists. The written determination of the Board

shall be submitted to the head of the operating administration or the designee of one of these officials, who may reconsider the initial undue burden determination. The Board's undue burden report and the final determination shall then be submitted to the Secretary or designated appointee for approval or disapproval of the Board's recommendation or make such modifications as appropriate.

2.008 Enforcement/Complaint Process

The enforcement provision of Section 508, i.e., the right to file private lawsuits in Federal district court or submit an administrative complaint by an agency employee, applies only when a Federal agency procures goods or services. The law is not retroactive; it is enforceable only for items/services procured after the effective date, June 21, 2001.

When an employee or a member of the public with a disability files a complaint with the DOT claiming a DOT procurement is not in compliance, the process for handling that complaint will follow already established procedures.

The procedures for employees or applicants who have filed a Section 508 complaint are designed to parallel the Department's EEO process for complaints of employment discrimination. See 29 C.F.R. Part 1614 (2001).

The procedures for members of the public who have filed a Section 508 complaint are designed to supplement the Department's Section 504 complaint procedures. See 49 C.F.R. Section 28.170.

Individuals may also file a civil action against the DOT to seek injunctive relief and reasonable attorney's fees (but not compensatory or punitive damages).

2.009 Assessments of Departmental Web sites

All websites, that have been procured, maintained, developed, or modified after June 21, 2001, will be verified for Section 508 compliance using an enterprise Section 508 web compliance checking application. The Project Manager, for each website, should submit to S80 the following information pertaining to the site: the name of the Operating Administration, the site name, URL, Project Manager's name and e-mail address, Section 508 Coordinator name and e-mail address.

2.010 Section 508 vs. Section 501/Section 504 (Reasonable Accommodations)

Section 508 cannot be fully grasped without a basic understanding of Sections 501 and 504 of the Rehabilitation Act. These sections contain general prohibitions of disability-based discrimination and generally require federal agencies and departments to provide reasonable accommodations to qualified persons with disabilities, including employees and members of the public, upon request. "Reasonable accommodations" are not one-size-fits-all responses to disability access issues. Instead, they are measures carefully tailored to meet the needs of an individual with a disability to enable him or her to accomplish a particular job or participate in a specific program. Section 508 is "technology-centered" and focuses on whether mainstream EIT products meet the Access Board's Section 508 Standards, whether or not an agency has employees with disabilities or serves members of the public with disabilities. The reasonable accommodation provisions of sections 501 and 504 are "person-centered" and focus on how an individual's disability should be accommodated in a particular setting.

As the Access Board's Section 508 Standards cannot ensure that all EIT will be universally accessible to all people with disabilities, reasonable accommodations will always be required in some instances. In some instances, people with disabilities may not need accommodations at all, as the underlying technology will be fully accessible to them.

Each Web site shall include a page with instructions on how to request information in alternate formats, or shall include that information on the contact page, which is accessible from the homepage.

2.011 Application to other Federal Laws

This policy shall not be construed to limit any right, remedy, or procedure otherwise available under any provision of Federal law that provides greater or equal protection for the rights of individuals with disabilities.